

WELSA HEIRSHIP DETERMINATION
OF HERMAN JAMES LAROQUE

: Order Affirming Decision
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: Docket No. IBIA 93-128-W
:
: November 29, 1993

Appellant Lillian Patton seeks review of an August 20, 1993, order in which Administrative Judge Sandra L. Massetto found that Delores Littlewolf Glomsrud was the daughter of Herman James LaRoque (decedent). This determination was made to fulfill the requirements of the White Earth Reservation Land Settlement Act of 1985, 25 U.S.C. § 331 note (1988) (WELSA). For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

The Board received appellant's notice of appeal on September 20, 1993. The notice states in its entirety:

I am asking for a DNA (Deoxyribonucleic Acid) Test to determine paternity of Dolores Glomsrud.

She made a statement about staying at the LaRoque home at Roy Lake, Minnesota when she was a child. I have lived at home with both my parents from birth to twenty years (20) old and I know that she did not, ever, live with us or did I ever bear of her.

Her mother (Julie Littlewolf) was twenty-three (23) years old when she was born (4-7-36). My brother, Herman James LaRoque was born 3-3-16, therefore he was twenty years (20) old when she was born. My brother, Herman, was under age, and a minor.

Nancy Fairbanks is not an authority on the LaRoque history. All her information is hearsay.

I will not believe that Dolores Glomsrud is Herman James LaRoque's daughter until proved by the DNA test. Only then will I accept this.

Under 43 CFR 4.356(d), an appellant in a WELSA heirship determination appeal has 30 days after filing a notice of appeal in which to file a statement of reasons setting forth why the order being appealed is in error. Appellant did not file a statement of reasons.

Section 4.356(d) further provides that

[i]f the Board finds that the appellant has set forth sufficient reasons for questioning the * * * order * * *, the Board will

issue an order giving all parties in interest an opportunity to respond, following which a decision shall be issued. If the Board finds that the appellant has not set forth sufficient reasons for questioning the * * * order, the Board may issue a decision on the appeal without further briefing.

Judge Massetto held that, because decedent and Julia Littlewolf were not married when Delores was born, Delores could not “inherit from the decedent unless there is a written and witnessed acknowledgement of paternity by [decedent] or there has been a determination of paternity before a court of competent jurisdiction. Minn. Stat. Sec. 525.172 (1971)” (Final Order Determining Heirs at 2; emphasis in original). The Judge continued:

[An] Order of Paternity and Support dated April 20, 1939 by District Court, Fifteenth Judicial District, Clearwater County, Minnesota shows that on December 21, 1938, Julia Littlewolf filed a complaint against James LaRoque, the name that decedent commonly used, in which she alleged that on April 7, 1936 she gave birth to a female child whose father was [decedent]. On April 18, 1939 a hearing was held in the District Court * * *. In the hearing, [decedent] acknowledged in open court that he was the father of an illegitimate female child born to Julia Littlewolf on the 7th day of April, 1936 at Sisseton, S.D. Based on decedent's admission of paternity, the District Court ordered:

. . . that said James LaRoque be, and he is hereby, adjudged to be the father of said child and henceforth shall be subject to all obligations for the care, maintenance and education of such child and to all penalties for failure to perform the same, which are, or shall be imposed by law upon the father of a legitimate child of like age and capacity. (Emphasis added [by Judge Massetto]).

Although the court did not specifically mention the name of the female illegitimate child, the child born to Julia Littlewolf on April 7, 1936 at Sisseton, S.D. was Delores Littlewolf Glomsrud.

* * * Clearly, in the order dated April 20, 1939, [decedent] was determined to be the father of Delores Littlewolf Glomsrud and the District Court, Fifteenth Judicial District, County of Clearwater, Minnesota was a court of competent jurisdiction to enter the order of paternity and support against the decedent.

(Id. at 3).

Appellant questions Delores' statement that she lived at the LaRoque home and Nancy Fairbanks' knowledge of LaRoque family history. The Judge did not rely on testimony in issuing her final order, but instead relied on the state court paternity determination.

Appellant apparently questions the facts that decedent was a minor when Delores was born, and/or that Julia was older than decedent. Appellant does not, however, indicate any way in which either of these facts would render decedent incapable of being Delores' father.

Appellant also states that she will not believe the paternity determination without a DNA test. Whether or not appellant believes that Delores is decedent's daughter is immaterial to the decision. Decedent was judicially determined to be Delores' father. Appellant has not questioned the jurisdiction of the state court to enter a paternity determination in this matter, or Judge Massetto's reliance on that order.

Appellant has failed to show any error in Judge Massetto's August 20, 1993, order. Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1 and 4.356, that order is affirmed.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge